IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8847 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHABHAI DHANABHAI MAKWANA

Versus

DIVISIONAL CONTROLLER

Appearance:

MR MUKESH H RATHOD for the Petitioner.

MR MD PANDYA for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 19/06/2002

ORAL JUDGEMENT

The petitioner was serving as a Driver in the S.T. Corporation. He was subjected to chargesheet on 29.5.1983 as it was found that he was not reporting for duty and was remaining absent unauthorisedly. It was the case of the S.T. Corporation that, without giving any prior report, the petitioner went on leave and,

ultimately, after concluding the departmental enquiry, he was removed from service by an order dated 27.7.1987. Thereafter, the petitioner raised an Industrial Dispute and the matter was referred to the Labour Court, Rajkot and numbered as Reference (LCR) 1849 of 1988. The demand on the part of the petitioner was that he should be reinstated with full back wages. The case of the S.T. Corporation before the Labour Court was that without getting the leave sanctioned, the petitioner went on leave in a high-handed manner, with the result that the Corporation was required to arrange for another driver, which resulted in delay in operating the bus and that resulted into financial loss also to the S.T. Corporation. It is found that even during the enquiry, the petitioner did not care to remain present before the Enquiry Officer and he refused to accept the intimation sent by the Department. Considering the evidence on record, the Labour Court came to the conclusion that the Medical Certificate produced by the petitioner was not reliable, and the Labour Court has given a positive finding that it is proved that the concerned workman was absent unauthorisedly with effect from 2.4.1987 upto 27.5.1987 and that no care was taken by him even for remaining present before the Enquiry Officer. He had refused the letters which were sent to him by way of Registered Post A.D. The petitioner, in the meanwhile, had also retired on attaining the age of superannuation.

Considering the facts and circumstances of the case, it was found by the Labour Court that in view of the aforesaid aspect, there was no question of reinstating the petitioner in service. So far as the question of payment of back wages is concerned, the Labour Court has come to the conclusion that it is not a case in which any back wages could have been awarded to the petitioner. The petitioner has challenged the aforesaid Award by way of this petition.

It was argued by Mr.Upadhyay that the petitioner should have been given back wages at least for the interim period. Considering the fact that before the Enquiry Officer, the petitioner failed to remain present and coupled with the fact that it has been found by the Labour Court that the medical certificate produced by the petitioner is not genuine, the Labour Court has exercised discretion by not awarding back wages. In my view this is not a case in which the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India should be exercised. Since the concerned workman has already retired, the Labour Court has rightly come to the conclusion that there is no question of

reinstatement. It is, however, clarified that as per the Rules, whatever may be the retiremental benefits due to the petitioner, the Corporation may give the same to him and on the basis of the Award of the Labour Court, the same may be paid to him expeditiously, within a period of two months from today. It is needless to say that such payment should be made in accordance with the Rules of the S.T. Corporation. However, in so far as the impugned Award is concerned, I do not find any ground for interfering with the same. Hence, the petition is dismissed. Rule is discharged with no order as to costs.

It is clarified that it is for the S.T. Corporation to calculate the retiral dues as per the Rules. Whatever legitimate dues are required to be given to the concerned workman, if not paid so far, may be paid to him.

19th June, 2002 (P.B. Majmudar, J.)

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(apj)